IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.Rev.Pet.No. 3241 of 2007()

CRA.458/2005 of ADDL.SESSIONS COURT (ADHOC)III, MANJERI
CC.150/2003 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

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REVN. PETITIONER: APPELLANT/ACCUSED

MUHAMMAD, S/O.ALAVI, PARASSERI HOUSE,
KUZHIMANNA AMSOM, KIZHISSERI DESOM, AREACODE.

BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE, MANJERI.

2. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. NO. 3241 of 2007

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Dated: 6th September 2007

ORDER

The revision petitioner who is the son-in-law of the de facto complainant (CW1) was the accused in C.C. 150 of 2003 on the file of the Chief Judicial Magistrate, Manjeri for offences punishable under Sections 323 and 325 I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 29-8-2002 at about 2 p.m. in Shalimar Hotel by the side of Manjeri Kovilakaom road the accused out of his previous enmity towards his father-in-law C.W.1 due to the family dispute with P.W.1 the wife of the accused, slapped C.W.1 resulting in the dislocation of four teeth and also beat him with an iron pipe causing fracture on his left wrist. The accused has thereby committed offences punishable under Sections 323 and 325 I.P.C.

3. On the side of the prosecution, eight witnesses were examined as P.Ws 1 to 8 and 8 documents were got marked as Exts.P1 to P8.

4. After the close of the prosecution evidence the accused was questioned under Sec. 313 (1) (b) Cr.P.C. He denied the incriminating circumstances put to him and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Chief Judicial Magistrate, after trial, as per

judgment dated 17-11-2005 found the revision petitioner guilty of the offences punishable under Sections 323 and 325 I.P.C. For the conviction under Sec. 323 I.P.C. he was sentenced to undergo rigorous imprisonment for one month and for the conviction under Sec. 325 I.P.C. he was sentenced to undergo rigorous imprisonment for six months. The sentences were directed to run concurrently. On appeal preferred by the revision petitioner as Crl. Appeal No. 458 of 2005, the lower appellate court confirmed the conviction entered and the sentence passed against the revision petitioner. Hence, this revision.

6. Eventhough the learned counsel appearing for the revision petitioner assailed the conviction recorded against him on various grounds, I am not inclined to dislodge the conviction which has been entered after a careful evaluation of the oral and documentary evidence in the case. The conviction recorded against the revision petitioner is accordingly confirmed.

7. What now survives for consideration as the question as to whether the sentence imposed on the revision petitioners is legal, and proper.

8. Taking into account the fact that the alleged weapon of offence was not recovered and the injured, charge witness No. I who is the father-in-law of the revision petitioner did not mount the witness box as he is reportedly employed abroad and it was his daughter P.W.1 (Habeeba) who gave the evidence as an eye-witness and the further fact that P.W.1 and the accused are not on cordial terms , I am of the view that penal servitude by way of incarceration is not warranted in this case and that interests of justice will be adequately met by directing the revision petitioner to suffer imprisonment till rising of court and to pay an adequate amount by way of

compensation to the injured. Accordingly, the sentence imposed on the reviison petitioner is set aside and instead, he is directed to pay a sum of Rs. 3,000/- by way of fine under Section 323 and on default to pay the fine to suffer simple imprisonment for one month. For his conviction under Section 325 I.P.C., the revision petitioner shall undergo imprisonment till rising of court and shall pay a sum of Rs. 15,000/- by way of compensation under Section 357 (3) Cr.P.C. to C.W.1. P.W.1 shall be entitled to collect the said amount upon deposit. The said compensation shall be paid within two months from today failing which the revision petitioner shall suffer simple imprisonment for two months by way of default sentence.

This Revision is disposed of accordingly.

V. RAMKUMAR, JUDGE

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